

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re)
) Case No. _____
)
) NOTICE OF **FINAL**
) HEARING ON MOTION
) FOR USE OF CASH COLLATERAL
) TO OBTAIN CREDIT
Debtor(s)) (Check One)

YOU ARE NOTIFIED THAT:

1. The undersigned moving party, _____, filed a Motion For Use of Cash Collateral To Obtain Credit (*check one*). A copy of the motion, which INCLUDES the statement required by [Local Form #541.7](#), is attached.

2. The name and service address of the moving party's attorney (or moving party, if no attorney) are: _____.

3. A **FINAL** HEARING on the motion WILL BE HELD ON _____ AT _____
IN _____,
and testimony will be received if offered and admissible.

4. If you WISH TO OBJECT to the motion, YOU SHALL, WITHIN 10 DAYS OF THE SERVICE DATE SHOWN in pt. 5 BELOW, FILE with the Clerk of Court (i.e., if the 5-digit portion of the Case No. begins with "3" or "4", mail to 1001 SW 5th Ave. #700, Portland OR 97204; OR if it begins with "6" or "7", mail to 405 E 8th Ave #2600, Eugene OR 97401), BOTH: (1) a written response, which states the facts upon which you will rely, AND (2) a certificate showing a copy of the response has been served on the U.S. Trustee and the party named in pt. 2 above. See [Local Form #541.50](#) for details.

5. On _____ copies of BOTH this notice AND the motion, were served pursuant to FRBP 7004 on the debtor(s); any debtor's attorney; any trustee; any trustee's attorney; members of any committee elected pursuant to 11 U.S.C. §705; any Creditors' Committee Chairperson [or, if none serving, on all creditors listed on the list filed pursuant to FRBP 1007(d)]; any Creditors' Committee attorney; the U.S. Trustee; and all affected lien holders whose names and addresses used for service are as follows:

Signature

(If debtor is movant) Debtor's Address & Taxpayer ID#(s) (last 4 digits)

1 Tara J. Schleicher, OSB #954021
2 TSchleicher@fwwlaw.com
3 Farleigh Wada Witt
4 121 SW Morrison Street, Suite 600
5 Portland, Oregon 97204-3136
6 Telephone: (503) 228-6044
7 Fax: (503) 228-1741

8 Attorneys for Debtor

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

Salpare Bay, LLC,

Debtor.

Case No. 10-35333-tmb11

DEBTOR'S MOTION TO OBTAIN
POST-PETITION CREDIT SECURED
BY PRIMING LIEN

**EXPEDITED CONSIDERATION
REQUESTED**

Pursuant to 11 USC § 364(d), Salpare Bay, LLC (the "Debtor"), the debtor-in-possession in the above-captioned bankruptcy proceeding, hereby moves this court for an order authorizing it to obtain post-petition credit from Access Business Finance LLC ("Access") in the amount of up to \$750,000 (the "DIP Loan") to be secured by a first lien against the Debtor's real property (a "Priming Lien"). Pursuant to LBF 541.7, the Debtor states that this motion contains a provision or finding of fact that Access' lien is a "first priority lien" on the Debtor's real property. Other than that provision, the motion to obtain credit does not contain any other the other provisions set forth in LBF 541.7. In support of this Motion, Debtor has filed the Declaration of Michael J. DeFrees.

JURISDICTION

The court has jurisdiction over this Motion pursuant to 28 USC § 157 and 1334.
This matter is a core proceeding pursuant to 28 USC § 157(b)(2).

Venue is proper pursuant to 28 USC § 1408 and 1409.

The statutory bases for the relief requested by the motion are Section 364 of the Bankruptcy Code, Rules 2002, 4001, and 9014 of the Federal Rules of the Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Bankruptcy Rule 4001-1 for the United States Bankruptcy Court for the District of Oregon (the “Local Rules”).

RELIEF REQUESTED

By this motion, the Debtor requests authority: (a) to obtain credit (the “DIP Loan”) pursuant to Section 364 of the Bankruptcy Code on the terms set forth herein; (b) to perform its obligations under and to utilize loan proceeds according to the DIP Loan and the Settlement Agreement approved by this Court by Order entered June 13, 2011 (the “Settlement Agreement”) (Docket No. 237), including but not limited to loan costs and fees associated with the FHA loan as contemplated in the Settlement Agreement and the Debtor’s proposed Plan (the “FHA Loan”); (c) pursuant to Section 364(d) of the Bankruptcy Code, to grant a Priming Lien to Access to secure all obligations of the Debtor under the DIP Loan; and (d) a finding by the Court that Access has acted in good faith and is entitled to the protections of §364(e) of the Bankruptcy Code.

BACKGROUND

In support of this motion, Debtor hereby represents as follows:

On June 7, 2010 (the “Petition Date”), the Debtor filed a voluntary petition under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”).

Pursuant to Sections 1107 and 1108, the Debtor continues to operate its business and manage its property as a debtor-in-possession. No trustee or examiner has been requested or appointed in this case.

The Debtor and Harbor Investors, LLC (“Harbor”) are the owners of real property on Hayden Island, Portland, Oregon, that was to be developed into a luxury riverfront planned community of 204 high-end residential water view condominium units commonly known as

1 Salpare Bay (the “Project”). The Debtor and Harbor own the Project with an undivided 85% and
2 15% interest, respectively, pursuant to a Tenants in Common Agreement.

3 The Debtor began construction in approximately 2005 on the related marina and
4 other horizontal improvements. The Project presently includes 24.5 acres of land, a marina, 200
5 feet of beach on the Columbia River, 14 acres of water, 204 slips to accommodate large crafts
6 and amenities, and facilities such as wireless internet, cable television, laundry, showers, and
7 dump station facilities.

8 The contractor on the Project, J.E. Dunn Northwest, Inc. (“Dunn”), and other
9 subcontractors (collectively the “Construction Claimants”) had performed a substantial amount
10 of work for which the Debtor could not pay them because of its lender’s failure to fund the
11 construction loan; thus, the Construction Claimants filed construction liens against the Property.
12 Ultimately, the Construction Claimants filed an action on their construction claims (the
13 “Construction Claims”) in that case known as *J.E. Dunn Northwest, Inc. v. Salpare Bay, LLC, et*
14 *al.* in the Circuit Court of the State of Oregon, Multnomah County, Case No. 0710-12536 (the
15 “Dunn Action”). Thereafter, the Project deteriorated. The sales agents and team quit, purchasers
16 of the presold units cancelled their purchases and withdrew their deposits, and development
17 came to a halt in all respects by the end of 2007.

18 The only secured claims against the Property are those held by the Construction
19 Claimants and real property taxing authorities, all totaling approximately \$7,100,000. The
20 Debtor filed this bankruptcy case because Dunn had scheduled a foreclosure sale on the
21 judgment lien it obtained from the Dunn Action, which sale was to be held in early June 2010.

22 The Debtor currently operates a high-end marina business with 204 slips on the
23 Property (the “Marina”). The Marina was completed in 2007 and became operational in the
24 spring of 2007. Due to the changes in the overall economic climate since 2005, the Debtor now
25 plans to construct approximately 371 apartment units on Phase I and Phase II of the Property.

26 ///

1 Through a mediation held on various dates with The Honorable Michael R.
2 Hogan (“Judge Hogan”) between the Debtor, Dunn, the Construction Claimants, Harbor, and the
3 City of Portland (collectively, the “Parties”), the Parties reached a settlement regarding their
4 disputes, the claims between them related to the Project, and the pending bankruptcy
5 proceedings. Pursuant to the Settlement Agreement, the Parties consent to confirmation of the
6 Debtor’s Plan or Reorganization, which has been filed as an exhibit to the Debtor’s First
7 Amended Chapter 11 Disclosure Statement (April 8, 2011) (Docket No. 215).

8 As part of the Settlement Agreement, Harbor is to assign its membership interests
9 to the Debtor, which will ultimately result in the Debtor being the sole owner of the Property.
10 Under the Settlement Agreement, Harbor shall assign those interests to the Debtor within five (5)
11 days of approval of the Settlement Agreement, which took place on June 13, 2011.

12 Pursuant to the Settlement Agreement, the Parties agreed that the Debtor will
13 commence development of the Property by first obtaining the DIP Loan with the maximum
14 amount of \$500,000 (with leave to seek an additional \$250,000) to prepare the Property for the
15 development of a multifamily residential project in two phases around the Marina, and second
16 through an FHA loan to commence construction on Phase I. The Debtor will develop the
17 Property with three distinct sections, and to the extent necessary, will partition the Property into
18 three separate portions: (1) the Marina; (2) Phase I¹; and (3) Phase II.

19 The Parties have agreed that the Debtor shall obtain the DIP Loan, which shall be
20 secured with a first lien trust deed to which the Construction Claimants will subordinate their
21 liens, to put in a parking lot for the Marina, possibly partition the Property as set forth above, to
22 develop the Property sufficient to obtain the FHA Loan on Phase I (surveying, engineering, and
23 other related costs/expenses), and to pay professional fees associated with this bankruptcy case.

24
25 ¹ The Debtor intends to develop the first phase of the multifamily residential project with approximately
26 166 apartment units and ancillary improvements where Building C currently sits on the Property and to
the East.

1 The Construction Claimants may consider an additional \$250,000 advance under the priming
2 DIP Loan upon receipt of a fully executed commitment letter from a bank or other financial
3 institution agreeing to loan the Debtor the funds necessary to construct Phase I of the Project.

4 **THE DIP LOAN TERMS**

5 The following is a summary of the DIP Loan terms:

6 1. Access will make the DIP Loan to the Debtor in the principal amount of
7 \$500,000, with an additional \$250,000 advance if approved as set forth above and approval of
8 the Court after notice and hearing which advance shall have the same security, lien priority, and
9 §364(e) protections as the DIP Loan and be pursuant to a Final Order in form and substance
10 acceptable to Access. The DIP Loan credit agreement is attached hereto as Exhibit 1.

11 2. The Debtor will use the proceeds of the DIP Loan to pay for construction
12 costs to complete parking for the Marina, soft and construction costs related to the conversion of
13 the condominium project to apartments, and for professional fees incurred by the Debtor in the
14 bankruptcy case, plus an additional \$250,000 advanced if authorized under the Settlement
15 Agreement.

16 3. The term of the loan shall be two (2) years with interest only monthly
17 payments.

18 4. The DIP Loan shall bear interest at the rate of *The Wall Street Journal*
19 prime rate plus 10% floating daily.

20 5. An \$8,000 application fee shall be paid to Access when the DIP Loan is
21 approved by the Bankruptcy Court, in addition to a \$3,500 nonrefundable fee that has already
22 been paid by a principal of the Debtor. The entire \$11,500 fee is nonrefundable and will be
23 applied toward, but is not limited to, the direct costs of reports, client review/visit by Access,
24 administration/setup, title fees, escrow and loan documentation legal costs. This fee will be
25 credited against the Debtor's costs at closing.

26 6. A loan fee of \$37,500 is earned and payable upon loan closing.

1 7. The DIP Loan shall be secured by an allowed Priming Lien, which shall
2 constitute a first deed of trust on the Property to which the Construction Claimants will
3 subordinate their liens and superior to all liens or interests in the Property except for real estate
4 taxes.

5 8. Access will provide a partial release on its first deed of trust upon funding
6 of the FHA Loan to complete Phase I (as defined in footnote 1 above) of the apartment
7 construction and payment in full of all delinquent real estate taxes on all Access collateral under
8 the DIP Loan. Such release shall not include the Marina or Phase II of the Project. Access will
9 receive a super priority lien on client's accounts into which the advances under the loan flow.
10 The Construction Claimants will receive a super priority lien on the client's account in which the
11 Marina rents flow. The Debtor shall be able to use the funds on deposit in either account to
12 make interest payments on this loan. Access shall also receive an assignment of rents from the
13 Marina. The Construction Claimants' super priority lien shall be subordinate to the Access
14 assignment of rents with regard to the payment of interest on the Access loan as and when
15 necessary and in the event of default of the DIP Loan, Access shall have a first claim superior to
16 all other claimants to the Marina rents.

17 9. For avoidance of doubt, in the event of a conflict between the Settlement
18 Agreement and the terms and conditions of the order approving this motion, the order shall
19 prevail as to the rights of Access.

20 10. The security interest and liens granted to Access shall be deemed validly
21 and properly perfected and enforceable against all other persons or entities upon entry of the
22 order approving the DIP Loan without the necessity of filing, recording, or serving any financing
23 statements, deeds, mortgages, account control agreements, or other documents which may
24 otherwise be required under federal or state law in any jurisdiction or the taking of any other
25 action to validate or perfect the security interest in liens granted to Access herein.

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1 **BASES FOR RELIEF**

2 Section 364(d)(1) of the Bankruptcy Code provides:

3 The court, after notice and the hearing, may authorize the obtaining
4 of credit or the incurring of debt secured by a senior or equal lien
on property of the estate that is subject to a lien only if -

5 (A) The trustee is unable to obtain such credit otherwise; and

6 (B) There is adequate protection of the interest of the holder of the
7 lien on the property of the estate on which such senior or equal lien
is proposed to be granted.

8 **THE DIP LOAN SHOULD BE APPROVED**

9 Debtor requires use of the DIP Loan proceeds to develop the Property sufficient
10 to obtain the FHA Loan to construct Phase I of the apartment project. If the Debtor is unable to
11 obtain the financing pursuant to the DIP Loan, its ability to continue its business and develop the
12 Project pursuant to its proposed Plan of Reorganization will be jeopardized, which would risk
13 reducing the value of the estate and jeopardizing creditors' recoveries. To enable Debtor to
14 maximize the value of its assets, the use of the DIP Loan is imperative. Accordingly, pursuant to
15 Section 364 of the Bankruptcy Code, Bankruptcy Rule 4001 and Local Bankruptcy Rule 4001-1,
16 the court is authorized to grant the relief requested herein.

17 Debtor is unable to procure adequate post-petition financing in the form of
18 unsecured credit or unsecured debt thus, the circumstances of this case require the Debtor to
19 obtain financing under Section 364(d) of the Bankruptcy Code.

20 The interest of the current lienholders (the Construction Claimants) on the
21 Property will be adequately protected based upon the equity that currently exists in the Property.
22 Under the Order Denying Dunn's Motion for Relief from Stay, this court found the value of the
23 Property to be \$9,715,000.00 as of August 10, 2010. Moreover, based upon the consent of the
24 Construction Claimants under the Settlement Agreement to the granting of a Priming Lien to
25 Access for the DIP Loan, the court should find that the interests of the current lienholders are
26 adequately protected.

1 The terms of the DIP Loan are in the best interests of the estate pursuant to the
2 Debtor's business judgment, which is to be accorded deference so long as it does not run afoul of
3 the provisions of and policies underlying the Bankruptcy Code. *See, e.g., Bray v. Shenandoah*
4 *Fed. Sav. & Loan Association (In re Snowshoe Co.)*, 789 F2d 1085, 1088 (4th Cir 1986)
5 (approving debtor-in-possession financing necessary to sustain seasonal business); *In re Ames*
6 *Department Stores, Inc.*, 115 BR 34, 40 (SDNY 1990) ("cases consistently reflect that the court
7 discretion under Section 364 is to be utilized on grounds that permit reasonable business
8 judgment to be exercised so long as the financing agreement does not contain terms that leverage
9 the bankruptcy process and powers or its purposes not so much to benefit the estate as to benefit
10 parties in interest").

11 The proposed DIP Loan is required to preserve and maintain Debtor's going
12 concern value and is, therefore, in the best interests of the Debtor's estate and creditors. The
13 availability of credit under the DIP Loan is necessary to provide Debtor with the working capital
14 to make the improvements necessary to obtain the FHA Loan to commence construction on
15 Phase I of the apartment Project consistent with the Plan of Reorganization. Accordingly, the
16 Debtor requests that this court authorize the Debtor to obtain post-petition financing from Access
17 pursuant to the terms of the DIP Loan and provide Access with a Priming Lien to secure that DIP
18 loan.

19 WHEREFORE, the Debtor requests entry of an Interim Order in the form
20 attached hereto as Exhibit 2 authorizing the Debtor (a) to obtain credit (the "DIP Loan") pursuant
21 to Section 364 of the Bankruptcy Code on the terms set forth herein; (b) to perform its
22 obligations under and to utilize loan proceeds according to the DIP Loan and the Settlement
23 Agreement approved by this Court by Order entered June 13, 2011 (the "Settlement Agreement")
24 (Docket No. 237), including but not limited to loan costs and fees associated with the FHA Loan;
25 (c) pursuant to Section 364(d) of the Bankruptcy Code, to grant a Priming Lien to Access to
26 secure all obligations of the Debtor under the DIP Loan; and (d) a finding by the Court that

1 Access has acted in good faith and is entitled to the protections of §364(e) of the Bankruptcy
2 Code.

3 DATED: June 15, 2011.

4 FARLEIGH WADA WITT

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6 By: /s/ Tara J. Schleicher
Tara J. Schleicher, OSB #95402
Of Attorneys for Salpare Bay, LLC
TSchleicher@fwlaw.com
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May 3, 2011

Via Email c/o erose@obsidianfinance.com

Salpare Bay, LLC
c/o Mr. Ewan Rose
Obsidian Finance Group
10260 SW Greenburg Road, Suite 1150
Portland, OR 97223

Dear Mr. Rose:

Access Business Finance LLC ("Access") is pleased to present the following proposal for a credit accommodation to you ("Client"). This is not a final commitment to lend. This proposal is contingent upon the completion of final due diligence; the execution of formal agreements; and no material adverse changes in the financial condition of the Client and no material adverse changes in economic and market conditions. Access offers the following terms and conditions:

Purpose: Real estate loan

Loan Amount: \$750,000.00; with \$500,000.00 upon Bankruptcy Court approval and \$250,000.00 if authorized pursuant to settlement agreement between Client and construction lien claimants ("Settlement Agreement").

Term: Two Years, interest only (paid monthly).

Advances: Upon DIP approval by Bankruptcy Court, up to \$500,000 advanced for construction costs to complete parking for Salpare Bay Marina, soft and construction costs related to conversion of the condominium project to apartments, and for professional fees incurred by Client in bankruptcy case; plus additional \$250,000 advanced if authorized under Settlement Agreement.

Interest Rate: Wall Street Prime Rate plus 10% floating daily.

Application Fee: \$8,000.00 to be paid to Access when this proposal is approved by the Bankruptcy Court. This amount is in addition to a \$3,500 non-refundable fee that has already been paid by a principal of Client. The entire \$11,500 fee is non-refundable and will be applied towards, but is not limited to, the direct costs of reports, Client review/visit by Access, administration/set-up, title fees, escrow and loan documentation legal costs. This fee will be credited against your costs at closing. Should you elect not to close, the fee will be retained by Access.

Loan Fee: \$37,500.00. The loan fee is earned and payable upon loan closing.

Collateral: A first deed of trust as granted by the Bankruptcy Court on the Salpare Bay Marina and excess land located at 499 NE Tomahawk Island Drive, Portland, OR.

Access will provide a partial release on the first deed of trust upon funding of a construction loan to complete Phase I of the apartment construction. Such release shall not include the marina or Phase II of the apartment project.

Access will receive a super priority lien on Client's account into which the advances under the loan flow. The construction lien creditors will receive a super priority lien on the Client's account into which the Marina rents flow. However, for avoidance of doubt, absent a default, Client shall be able to use the funds on

deposit in either account to make interest payments on this loan. In no circumstances will the construction lien creditors have the ability to demand repayment of payments from Client to Access in respect of interest due on this loan except as based on a preference theory following a future bankruptcy filing of Client under 11 USC § 547 or on a fraudulent transfer theory.

Access also requires an assignment of rents from the Marina. For avoidance of doubt, in the event of a default nothing shall prevent Access from exercising such assignment of rents and receiving all future rents from the Marina.

Early Termination
Premium:

Waived.

Other Information:

Client to reimburse or pay for all normal costs of closing a real estate loan, including but not limited to, escrow fees, title insurance, transfer/recording fees, taxes, legal expenses, etc. The Application Fee will be applied towards these costs.

Access' intent is to use filing documents prepared by Client's counsel with Access' counsel reviewing such documents to minimize legal expense.

We appreciate the opportunity to submit this proposal. All others terms and conditions not covered above will be expressed in detail in the Note and Deed of Trust and/or other documents.

Upon your acceptance of the above and after Bankruptcy Court approval, please return by fax or mail, a signed copy of this letter along with a check for \$8,000 (the remaining unpaid Application Fee). This proposal is valid until 45 days after the date of this proposal.

Oral agreements or oral commitments to loan money, extend credit, or to forbear from enforcing repayment of a debt are not enforceable under Washington law.

Please call me with any questions. I look forward to working with you.

Very truly yours,

Access Business Finance


Douglas L. McDonald
Manager

Salpare Bay, LLC

Accepted this date _____, _____

By: _____
Print Name: _____

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

Salpare Bay, LLC,

Debtor.

Case No. 10-35333-tmb11

ORDER APPROVING DEBTOR'S MOTION
TO OBTAIN POST-PETITION CREDIT
SECURED BY PRIMING LIEN

This matter came before this Court upon Debtor Salpare Bay, LLC's ("Debtor") Motion to Obtain Post-Petition Credit Secured by Priming Lien (the "Motion") (Docket No. __) seeking authority to: (a) obtain post-petition credit from Access Business Finance LLC ("Access") in the amount of up to \$750,000 (the "DIP Loan") pursuant to Section 364 of the Bankruptcy Code on the terms set forth in the Motion and herein; (b) perform its obligations under and to utilize loan proceeds according to the DIP Loan and the Settlement Agreement approved by this Court by Order entered June 13, 2011 (the "Settlement Agreement") (Docket No. 237), including but not limited to paying loan costs and fees associated with the FHA loan as contemplated by the Settlement Agreement and the Debtor's proposed Plan (the "FHA Loan"); (c) grant a Priming Lien to Access to secure all obligations of the Debtor under the DIP Loan pursuant to Section 364(d) of the Bankruptcy Code; and (d) requesting a finding by the Court

that Access has acted in good faith and is entitled to the protections of §364(e) of the Bankruptcy Code.

A hearing on the Motion having been held, and based upon all of the pleadings filed with this Court, and it appearing that the relief requested in the Motion is in the best interests of the Debtor and its estate, and after due deliberation and consideration, and sufficient cause appearing therefor,

IT IS HEREBY FOUND as follows:

1. Petition Date. On June 7, 2010 (the “Petition Date”), the Debtor filed a voluntary petition under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). Pursuant to Sections 1107 and 1108, the Debtor continues to operate its business and manage its property as a debtor-in-possession. No trustee or examiner has been requested or appointed in this case.

2. Jurisdiction and Venue. The Court has jurisdiction over this matter pursuant to 28 USC § 157 and 1334. This matter is a core proceeding pursuant to 28 USC § 157(b)(2). Venue is proper pursuant to 28 USC § 1408 and 1409.

3. Notice. Sufficient and adequate notice of the hearing on this matter and the entry of this Order have been given in accordance with Bankruptcy Rule 4001, and no other or further notice need be given for entry of this Order.

4. Purpose and Necessity of Financing. The Debtor requires the use of the DIP Loan proceeds to develop the Property sufficient to obtain the FHA Loan to construct Phase I of the apartment project. If the Debtor is unable to obtain the financing pursuant to the DIP Loan, its ability to continue its business and develop the Project pursuant to its proposed Plan of Reorganization will be jeopardized, which would risk reducing the value of the estate and jeopardizing creditors’ recoveries. Debtor is unable to procure adequate post-petition financing in the form of unsecured credit or unsecured debt thus, the circumstances of this case require the Debtor to obtain financing under Section 364(d) of the Bankruptcy Code. Moreover, the Court

entered an Order approving the Settlement Agreement between the Debtor and all of its secured creditors that requires the DIP Loan (Docket No. 237).

5. Good Faith. The DIP Loan has been negotiated in good faith by the Debtor and Access.

Based upon the foregoing, and after due consideration and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The Motion is granted. This Order shall immediately become effective upon its entry. The terms and provisions of the DIP Loan are approved.

2. The Debtor is hereby authorized to immediately obtain the DIP Loan in the amount of up to \$750,000, with \$500,000 being the initial maximum amount and the possibility of an additional advance of \$250,000 under the terms of the Settlement Agreement.

3. The Debtor is granted authority to perform its obligations under and to utilize loan proceeds according to the DIP Loan and the Settlement Agreement, including but not limited to loan costs and fees associated with the FHA Loan.

4. The Debtor is authorized to grant a Priming Lien to Access, which shall constitute a first trust deed on the Property to which the Construction Claimants will subordinate their liens, which shall be superior to all liens or interests in the Property except for the real estate taxes.

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5. Access has acted in good faith and is entitled to the protections of §364(e) of the Bankruptcy Code.

#

PRESENTED BY:

FARLEIGH WADA WITT

By: /s/ Tara J. Schleicher

Tara J. Schleicher, OSB #954021

tschleicher@fwwlaw.com

Of Attorneys for Debtor

cc: Interested Parties

1 Tara J. Schleicher, OSB #954021
2 TSchleicher@fwwlaw.com
3 Farleigh Wada Witt
4 121 SW Morrison Street, Suite 600
5 Portland, Oregon 97204-3136
6 Telephone: (503) 228-6044
7 Fax: (503) 228-1741

8 Attorneys for Debtor

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

Salpare Bay, LLC,

Debtor.

Case No. 10-35333-tmb11

DECLARATION OF MICHAEL J.
DEFREES IN SUPPORT OF DEBTOR'S
MOTION TO OBTAIN POST-PETITION
CREDIT SECURED BY PRIMING LIEN

I, Michael J. DeFrees, declare as follows:

1. I am the President of Columbia Rim Corporation, the Manager of Salpare Bay, LLC ("Debtor"). I am also the sole Member of Salpare. I make this declaration based upon my own personal knowledge and in support of Debtor's Motion to Obtain Post-Petition Credit Secured by Priming Lien (the "Motion") authorizing the Debtor to obtain post-petition credit from Access Business Finance LLC ("Access") in the amount of up to \$750,000 (the "DIP Loan") to be secured by a first lien against the Debtor's real property (a "Priming Lien").

2. On June 7, 2010 (the "Petition Date"), the Debtor filed a voluntary petition under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). The Debtor continues to operate its business and manage its property as a debtor-in-possession. No trustee or examiner has been requested or appointed in this case.

3. Debtor and Harbor Investors, LLC ("Harbor") are the owners of real property on Hayden Island, Portland, Oregon, that was to be developed into a luxury riverfront

1 planned community of 204 high-end residential water view condominium units commonly
2 known as Salpare Bay (the “Project”). The Debtor and Harbor own the Project with an
3 undivided 85% and 15% interest, respectively, pursuant to a Tenants in Common Agreement.

4 4. The Debtor began construction in approximately 2005 on the related
5 marina and other horizontal improvements. The Project presently includes 24.5 acres of land, a
6 marina, 200 feet of beach on the Columbia River, 14 acres of water, 204 slips to accommodate
7 large crafts and amenities, and facilities such as wireless internet, cable television, laundry,
8 showers, and dump station facilities.

9 5. The contractor on the Project, J.E. Dunn Northwest, Inc. (“Dunn”), and
10 other subcontractors (collectively the “Construction Claimants”) had performed a substantial
11 amount of work for which the Debtor could not pay them because of its lender’s failure to fund
12 the construction loan; thus, the Construction Claimants filed construction liens against the
13 Property. Ultimately, the Construction Claimants filed an action on their construction claims
14 (the “Construction Claims”) in that case known as *J.E. Dunn Northwest, Inc. v. Salpare Bay,*
15 *LLC, et al.* in the Circuit Court of the State of Oregon, Multnomah County, Case No. 0710-
16 12536 (the “Dunn Action”). Thereafter, the Project deteriorated. The sales agents and team quit,
17 purchasers of the presold units cancelled their purchases and withdrew their deposits, and
18 development came to a halt in all respects by the end of 2007.

19 6. The only secured claims against the Property are those held by the
20 Construction Claimants and real property taxing authorities, all totaling approximately
21 \$7,100,000. The Debtor filed this bankruptcy case because Dunn had scheduled a foreclosure
22 sale on the judgment lien it obtained from the Dunn Action, which sale was to be held in early
23 June 2010.

24 7. The Debtor currently operates a high-end marina business with 204 slips
25 on the Property (the “Marina”). The Marina was completed in 2007 and became operational in
26 the spring of 2007. Due to the changes in the overall economic climate since 2005, the Debtor

1 now plans to construct approximately 371 apartment units on Phase I and Phase II of the
2 Property.

3 8. Through a mediation held on various dates with The Honorable Michael
4 R. Hogan (“Judge Hogan”) between the Debtor, Dunn, the Construction Claimants, Harbor, and
5 the City of Portland (collectively, the “Parties”), the Parties reached a settlement regarding their
6 disputes, the claims between them related to the Project, and the pending bankruptcy
7 proceedings. Pursuant to the Settlement Agreement, the Parties consent to confirmation of the
8 Debtor’s Plan or Reorganization, which has been filed as an exhibit to the Debtor’s First
9 Amended Chapter 11 Disclosure Statement (April 8, 2011) (Docket No. 215).

10 9. As part of the Settlement Agreement, Harbor is to assign its membership
11 interests to the Debtor, which will ultimately result in the Debtor being the sole owner of the
12 Property. Under the Settlement Agreement, Harbor shall assign those interests to the Debtor
13 within five (5) days of approval of the Settlement Agreement, which took place on June 13,
14 2011.

15 10. Pursuant to the Settlement Agreement, the Parties agreed that the Debtor
16 will commence development of the Property by first obtaining the DIP Loan with the maximum
17 amount of \$500,000 (with leave to seek an additional \$250,000) to prepare the Property for the
18 development of a multifamily residential project in two phases around the Marina, and second
19 through an FHA loan to commence construction on Phase I. The Debtor will develop the
20 Property with three distinct sections, and to the extent necessary, will partition the Property into
21 three separate portions: (1) the Marina; (2) Phase I¹; and (3) Phase II.

22 11. The Parties have agreed that the Debtor shall obtain the DIP Loan, which
23 shall be secured with a first lien trust deed to which the Construction Claimants will subordinate
24

25 ¹ The Debtor intends to develop the first phase of the multifamily residential project with approximately
26 166 apartment units and ancillary improvements where Building C currently sits on the Property and to
the East.

1 their liens, to put in a parking lot for the Marina, possibly partition the Property as set forth
2 above, to develop the Property sufficient to obtain the FHA loan on Phase I (surveying,
3 engineering, and other related costs/expenses), and to pay professional fees associated with this
4 bankruptcy case. The Construction Claimants may consider an additional \$250,000 advance
5 under the priming DIP Loan upon receipt of a fully executed commitment letter from a bank or
6 other financial institution agreeing to loan the Debtor the funds necessary to construct Phase I of
7 the Project.

8 12. The following is a summary of the DIP Loan terms:

9 (a) Access will make the DIP Loan to the Debtor in the principal
10 amount of \$500,000, with an additional \$250,000 advance if approved as set forth above and
11 approval of the Court after notice and hearing which advance shall have the same security, lien
12 priority, and §364(e) protections as the DIP Loan and be pursuant to a Final Order in form and
13 substance acceptable to Access.

14 (b) The Debtor will use the proceeds of the DIP Loan to pay for
15 construction costs to complete parking for the Marina, soft and construction costs related to the
16 conversion of the condominium project to apartments, and for professional fees incurred by the
17 Debtor in the bankruptcy case, plus an additional \$250,000 advanced if authorized under the
18 Settlement Agreement.

19 (c) The term of the loan shall be two (2) years with interest only
20 monthly payments.

21 (d) The DIP Loan shall bear interest at the rate of *The Wall Street*
22 *Journal* prime rate plus 10% floating daily.

23 (e) An \$8,000 application fee shall be paid to Access when the DIP
24 Loan is approved by the Bankruptcy Court, in addition to a \$3,500 nonrefundable fee that has
25 already been paid by a principal of the Debtor. The entire \$11,500 fee is nonrefundable and will
26 be applied toward, but is not limited to, the direct costs of reports, client review/visit by Access,

1 administration/setup, title fees, escrow and loan documentation legal costs. This fee will be
2 credited against the Debtor's costs at closing.

3 (f) A loan fee of \$37,500 is earned and payable upon loan closing.

4 (g) The DIP Loan shall be secured by an allowed Priming Lien, which
5 shall constitute a first deed of trust on the Property to which the Construction Claimants will
6 subordinate their liens and superior to all liens or interests in the collateral except for real estate
7 taxes.

8 (h) Access will provide a partial release on its first deed of trust upon
9 funding of the FHA loan to complete Phase I (as defined in footnote 1 above) of the apartment
10 construction and payment in full of all delinquent real estate taxes on all Access collateral under
11 the DIP Loan. Such release shall not include the Marina or Phase II of the Project. Access will
12 receive a super priority lien on client's accounts into which the advances under the loan flow.
13 The Construction Claimants will receive a super priority lien on the client's account in which the
14 Marina rents flow. The Debtor shall be able to use the funds on deposit in either account to
15 make interest payments on this loan. Access shall also receive an assignment of rents from the
16 Marina. The Construction Claimants' super priority lien shall be subordinate to the Access
17 assignment of rents with regard to the payment of interest on the Access loan as and when
18 necessary and in the event of default of the DIP Loan, Access shall have a first claim superior to
19 all other claimants to the Marina rents.

20 (i) For avoidance of doubt, in the event of a conflict between the
21 Settlement Agreement and the terms and conditions of the order approving this motion, the order
22 shall prevail as to the rights of Access.

23 (j) The security interest and liens granted to Access shall be deemed
24 validly and properly perfected and enforceable against all other persons or entities upon entry of
25 the order approving the DIP Loan without the necessity of filing, recording, or serving any
26 financing statements, deeds, mortgages, account control agreements, or other documents which

1 may otherwise be required under federal or state law in any jurisdiction or the taking of any other
2 action to validate or perfect the security interest in liens granted to Access herein.

3 DATED: June 15, 2011.

4
5 /s/ Michael J. DeFrees
6 Michael J. DeFrees
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List of Interested Parties
In re Salpare Bay, LLC, Case No. 10-35333-tmb11

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